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ORIGINAL FILED

JAN 19 1996

LOS ANGELES
SUPERIOR COURT

5 Attorneys for Plaintiff
6 GHODRAT NISSAN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

11 GHODRAT NISSAN, by and through	)	CASE NO. BC 142732
12 her guardian ad litem Frank)	
13 Mashadian;	)	EX PARTE APPLICATION FOR
	)	TEMPORARY RESTRAINING ORDER AND
14 vs. Plaintiff,	)	FOR ORDER TO SHOW CAUSE RE:
	)	PRELIMINARY INJUNCTION;
15 A I B INC. dba HANCOCK PARK	)	MEMORANDUM OF POINTS AND
16 CONVALESCENT HOSPITAL AND	)	AUTHORITIES; DECLARATIONS OF
17 REHABILITATION CENTER; and DOES	)	GOHAR MASHADIAN, FRANK
One through Twenty;	)	MASHADIAN, CELIA KIRILOVER AND
	)	ERIC CARLSON
18 Defendants.	)	Date: January 19, 1996
	)	Time: 8:30 a.m.
	)	Place: Department 86

20 Plaintiff Ghodrat Nissan is a 78 year-old nursing home
21 resident. She applies for an order to show cause why defendant
22 A I B Inc. dba Hancock Park Convalescent Hospital and
23 Rehabilitation Center should not be enjoined pending trial of
24 this action from wrongfully evicting Ms. Nissan. In addition,
25 Ms. Nissan applies for a temporary restraining order requiring
26 defendant to readmit her to Hancock Park Convalescent Hospital,
27 her home for over three years, pending a hearing on the order to
28 show cause...

1 Ms. Nissan had lived at Hancock Park Convalescent Hospital
2 for three years before she recently was admitted to an acute-care
3 hospital for surgery. Although federal law required Hancock Park
4 Convalescent Hospital to readmit Ms. Nissan upon her discharge
5 from the hospital, Hancock Park Convalescent Hospital refused.
6 As a result, Ms. Nissan was sent abruptly by the hospital to a
7 second-rate nursing home. Hancock Park Convalescent Hospital
8 continues to refuse to readmit Ms. Nissan, effectively evicting
9 her from her home of the past three years.

10 This application is based on an accompanying memorandum of
11 points and authorities, the declarations of Gohar Mashadian,
12 Frank Mashadian, Celia Kirilover and Eric Carlson, the file of
13 this action, and any oral or written evidence which the Court may
14 consider at the relevant hearing.

15 DATED: January 18, 1996

Respectfully submitted,

BET TZEDEK LEGAL SERVICES



By: Eric M. Carlson
Attorneys for Plaintiff
GHODRAT NISSAN

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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
2 OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
3 FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION.

4 A. HANCOCK PARK CONVALESCENT HOSPITAL ILLEGALLY EVICTED
5 GHODRAT NISSAN WHEN IT ILLEGALLY REFUSED TO READMIT HER
6 AFTER HER SHORT STAY IN CEDARS-SINAI MEDICAL CENTER.

7 Plaintiff Ghodrat Nissan is a 78 year-old woman. For the
8 past three years, she has made her home in Hancock Park
9 Convalescent Hospital and Rehabilitation Center ("Hancock Park
10 Convalescent Hospital"). G. Mashadian Decl., ¶¶ 4, 8.

11 In recent months, nursing home employees have claimed that
12 Ms. Nissan disrupts the nursing home by yelling. G. Mashadian
13 Decl., ¶ 5; F. Mashadian Decl., ¶ 2. Regardless, Hancock Park
14 Convalescent Hospital has not served an eviction notice on Ms.
15 Nissan or on any member of her family. G. Mashadian Decl., ¶ 5;
16 F. Mashadian Decl., ¶ 2.

17 On January 3, 1996, Ms. Nissan entered Cedars-Sinai Medical
18 Center, where she subsequently had a toe amputated. G. Mashadian
19 Decl., ¶ 7. After her condition stabilized, her family requested
20 that she be readmitted to Hancock Park Convalescent Hospital, but
21 Hancock Park Convalescent Hospital refused to readmit her.
22 F. Mashadian Decl., ¶ 4; Exh. E (1/12/96 letter requesting
23 readmission, sent by Ms. Nissan's attorney). The administrator
24 and assistant administrator of the nursing home claimed that Ms.
25 Nissan was too disruptive. F. Mashadian Decl., ¶ 4.

26 On Monday January 15, 1996, Cedars-Sinai Medical Center
27 decided that Ms. Nissan would have to leave the hospital that
28 day. When Hancock Park Convalescent Hospital again refused to

1 readmit Ms. Nissan, Cedars-Sinai abruptly moved Ms. Nissan from
2 the hospital to Rubins Brierwood Terrace, a second-rate nursing
3 facility located on South La Cienega Boulevard. G. Mashadian
4 Decl., ¶¶ 8-9; F. Mashadian Decl., ¶¶ 6-7. Ms. Nissan currently
5 is residing at Rubins Brierwood Terrace because Hancock Park
6 Convalescent Hospital continues to refuse to readmit her. Exh. F
7 (1/16/96 letter requesting readmission, sent by Ms. Nissan's
8 attorney).

9 In essence, Hancock Park Convalescent Hospital "dumped" Ms.
10 Nissan at Cedars-Sinai Medical Center. This dumping was based on
11 defendant's cynical calculation: its management knows that
12 1) Hancock Park Convalescent Hospital does not have legal grounds
13 to evict Ms. Nissan, and 2) the Los Angeles Department of Health
14 Services (the regulatory agency for nursing homes in Los Angeles
15 County) will not conduct a timely investigation of dumping
16 complaints.

17 Defendant's actions are illegal: as explained below,
18 relevant federal law clearly obligates Hancock Park Convalescent
19 Hospital to readmit Ms. Nissan. Accordingly, immediate
20 injunctive relief is necessary: any other result will reward
21 Hancock Park Convalescent Hospital for its illegal actions.

22 **B. MANDATORY PRELIMINARY INJUNCTIVE RELIEF IS APPROPRIATE.**

23 A preliminary injunction is authorized by section 527 of the
24 Code of Civil Procedure. In deciding whether or not to issue
25 preliminary injunctive relief, a court "examines all of the
26 material before it in order to consider whether a greater injury
27 will result to the defendant from granting the injunction than to
28 the plaintiff from refusing it." Continental Baking Co. v. Katz,

1 68 Cal. 2d 512, 528, 67 Cal. Rptr. 761, 771 (1968). Two
2 interrelated factors are weighed: "the interim harm the
3 applicant is likely to sustain if the injunction is denied as
4 compared to the harm to the defendant if it issues, and the
5 likelihood the applicant will prevail on the merits at trial."
6 Triple A Machine Shop, Inc. v. State of California, 213 Cal. App.
7 3d 131, 138, 261 Cal. Rptr. 493, 497 (1989) (citations omitted).

8 1. Ms. Nissan Likely Will Prevail at Trial.

9 a. Federal Law Obligates Hancock Park Convalescent
10 Hospital To Readmit Ms. Nissan.

11 Federal law¹ prevents a nursing facility from "dumping" a
12 resident at an acute-care hospital. More specifically, relevant
13 federal law states that a nursing home resident must be
14 readmitted to the first available bed in the nursing home if
15 1) the resident's stay in an acute-care hospital has exceeded the
16 period of time for which the resident is allowed to "hold" his or
17 her bed in the nursing home, 2) the resident continues to need
18 nursing home services, and 3) the resident is eligible for the
19 Medicaid program (termed the "Medi-Cal" program in California).
20 Exh. A (42 U.S.C. § 1396r(c)(2)(D)(iii)) and B (42 C.F.R.
21 § 483.12(b)(3)).

22 This law is based on two primary considerations:
23

24 ¹ Federal nursing home law applies to any California nursing
25 home which accepts reimbursement from the Medi-Cal program. See
26 Exh. A (42 U.S.C. § 1396 (federal authorization for Medi-Cal
27 program)). Hancock Park Convalescent Hospital accepts Medi-Cal
28 reimbursement and, in return, must comply with relevant federal
law. Exh. G, p. 2 (Hancock Park Convalescent Hospital eligible for
Title 19 (Medi-Cal)); F. Mashadian Decl., ¶ 9 (Ms. Nissan's
residence at Hancock Park Convalescent Hospital paid by Medi-Cal
program).

1 1) stability of residence is important to a nursing home
2 resident, and 2) individuals eligible for the Medi-Cal program
3 oftentimes have difficulty obtaining admission into a nursing
4 home, because the Medi-Cal program pays a relatively low
5 reimbursement rate. Without this law, nursing homes easily could
6 dispose of its residents eligible for Medi-Cal, simply by
7 refusing readmission after a hospital stay.

8 Ms. Nissan's present predicament is exactly the situation
9 which federal law is designed to prevent. All three conditions
10 are satisfied. See, supra, p. 3 (description of federal law).

11 **First**, Ms. Nissan's stay in Cedars-Sinai Medical Center
12 exceeded the seven-day bed-hold period set by California law:
13 she was admitted on Wednesday January 3, 1996, and discharged on
14 Monday January 15. G. Mashadian Decl., ¶¶ 7-8; see Exh. C (Cal.
15 Code Regs., tit. 22, § 72520) (maximum bed-hold of seven days).

16 **Second**, Ms. Nissan continues to need nursing home services. She
17 is currently residing at Rubins Brierwood Terrace, which (like
18 Hancock Park Convalescent Hospital) is licensed as a skilled
19 nursing facility. Exh. H (licenses for Rubins Brierwood Terrace
20 and Hancock Park Convalescent Hospital); see also G. Mashadian
21 Decl., ¶¶ 2-4 (Ms. Nissan's need for nursing home services).

22 **Third**, Ms. Nissan is eligible for Medi-Cal. Exh. I (copy of Ms.
23 Nissan's Medi-Cal card); F. Mashadian Decl., ¶ 9.

24 Thus, Ms. Nissan satisfies all three conditions. Relevant
25 federal law obligates Hancock Park Convalescent Hospital to

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1 readmit her to the first available bed.²

2 **b. Hancock Park Convalescent Hospital Does Not Have**
3 **Grounds To Evict Ms. Nissan.**

4 Hancock Park Convalescent Hospital may claim that it can
5 deny readmission to Ms. Nissan because her behavior justifies
6 eviction. This claim is unsupportable. Federal law allows
7 eviction only after a nursing home has given a resident a 30-day
8 notice of eviction, which allows the resident to contest the
9 proposed eviction in an administrative hearing conducted by the
10 California Department of Health Services. See Exh. A (42 U.S.C.
11 § 1396r(c)(2)(B)) (nursing home eviction procedures). In this
12 case, Hancock Park Convalescent Hospital has not given Ms. Nissan
13 any notice of eviction, depriving her of any opportunity to
14 present her case in an administrative hearing. G. Mashadian
15 Decl., ¶ 5; F. Mashadian Decl., ¶ 2.

16 In any case, Hancock Park Convalescent Hospital does not
17 have grounds to evict Ms. Nissan. Under federal law, a nursing
18 home may evict a resident only if the nursing home can prove one
19 of six narrow justifications for eviction. Those justifications,
20 paraphrased, are as follows:

- 21 1. Transfer to another facility is necessary to meet
22 the resident's needs, because the nursing home
23 cannot meet those needs;
- 24 2. The resident's condition has improved so that he
25 or she no longer needs nursing home services;

26
27 ² An admissions employee for Hancock Park Convalescent
28 Hospital has stated that the nursing home almost always has a
vacancy for a woman. See Kirilover Decl.

- 1 3. The resident endangers the safety of other
- 2 individuals in the nursing home;
- 3 4. The resident endangers the health of other
- 4 individuals in the nursing home;
- 5 5. The resident owes the nursing home money; or
- 6 6. The nursing home is going out of business.

7 Exh. A (42 U.S.C. § 1396r(c)(2)(A)).

8 Hancock Park Convalescent Hospital alleges that Ms. Nissan
9 disrupts the facility by yelling. G. Mashadian Decl., ¶¶ 5-6;
10 F. Mashadian Decl., ¶¶ 2-3. Even if it is assumed that this
11 allegation is true, eviction is not warranted. Yelling is a
12 common occurrence among confused nursing home residents, many of
13 whom suffer from Alzheimer's Disease or other dementias. A
14 nursing home can meet the needs of a resident who yells (see
15 eviction justification (1)), and a resident who yells does not
16 endanger other residents' safety or health (see eviction
17 justifications (3) and (4)).

18 This reasoning has been confirmed by a previous decision of
19 the California Department of Health Services. In an instance in
20 which a nursing home provided proper notice of a proposed
21 eviction, a hearing officer ruled that a resident's disruptive
22 yelling did not justify eviction under federal law. Exh. J
23 (Eviction Hearing Decision Re: Resident Franklin Smith and
24 Alexandria Convalescent Hospital).

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2. Denial of This Application Would Greatly Harm Ms. Nissan, While the Granting of This Application Would Cause Little or No Harm To Hancock Park Convalescent Hospital.

Ms. Nissan has lived in Hancock Park Convalescent Hospital for over three years. G. Mashadian Decl., ¶¶ 4, 8. This nursing home, like any long-term residence, has become a home to Ms. Nissan. If Ms. Nissan now is kept away from her home, she almost certainly will become more depressed and more confused. G. Mashadian Decl., ¶¶ 9-11; F. Mashadian Decl., ¶ 8.

Changes of residence are particularly damaging to vulnerable nursing home residents, who often suffer the medically-recognized effects of "transfer trauma":

It is well documented that many nursing home residents suffer from debilitating conditions such as failing health, mental disease, and susceptibility to shock.... Once settled in a home, the trauma resulting from forced transfer often causes mental and physical setbacks.... The severity of the complications from "transfer trauma" ranges from mild depression to severe illness and death.... We [the Missouri Supreme Court] have recognized this problem,... as has the United States Supreme Court in *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 784 n.16, 100 S.Ct. 2467, 2475 n.16, 65 L.Ed.2d 506 (1980).

Exh. D (Villines v. Div. of Aging and Missouri Department of Social Services, 722 S.W.2d 939, 945-46 (Mo. 1987)).

Thus Ms. Nissan is currently at high risk. Due to a back

1 | infection and related problems, she has been unable to walk for
2 | the past three years. She suffers from confusion that sometimes
3 | makes her agitated, and currently is recovering from the recent
4 | amputation of a toe. G. Mashadian Decl., ¶¶ 3-4, 7-8;
5 | F. Mashadian Decl., ¶¶ 3, 8. For all these reasons, she is
6 | particularly susceptible to transfer trauma.

7 | Furthermore, the events of this week have left Ms. Nissan as
8 | a resident of a second-rate nursing home. Ms. Nissan's daughter
9 | and son report that Rubins Brierwood Terrace has relatively few
10 | nurses, old equipment, and a large percentage of residents with
11 | psychiatric disorders. G. Mashadian Decl., ¶ 9; F. Mashadian
12 | Decl., ¶ 7. In addition, public records contain documentation of
13 | a \$1,000 fine assessed against Rubins Brierwood Terrace.
14 | According to a hearing officer of the California Department of
15 | Health Services, the staff of Rubins Brierwood Terrace failed for
16 | ten months to care for a resident's vaginal infection. The
17 | infection was only diagnosed when the resident was admitted to an
18 | acute-care hospital, where a three-inch "cork" was removed from
19 | her vagina. Exh. K.

20 | In addition, this application represents Ms. Nissan's only
21 | real hope of obtaining timely readmittance to Hancock Park
22 | Convalescent Hospital. Ms. Nissan's attorney has contacted the
23 | Los Angeles Department of Health Services regarding the refusal
24 | of Hancock Park Convalescent Hospital to readmit Ms. Nissan: the
25 | Supervisor of the Central District told the attorney that the
26 | Department could only promise that a surveyor would investigate
27 | the matter within the next ten to thirty days. Carlson Decl., ¶
28 | 2.

1 In contrast, Hancock Park Convalescent Hospital will suffer
2 little or no harm if this application is granted. Hancock Park
3 Convalescent Hospital would be paid by the Medi-Cal program for
4 Ms. Nissan's stay. In addition, Hancock Park Convalescent
5 Hospital would not suffer due to Ms. Nissan's behavior: nothing
6 would prevent Hancock Park Convalescent Hospital from serving Ms.
7 Nissan with a 30-day notice of eviction, if Hancock Park honestly
8 believes that it has grounds for eviction.

9 3. A Mandatory Temporary Restraining Order Is Appropriate
10 To Protect Ms. Nissan.

11 Ms. Nissan recognizes that the temporary restraining order
12 requested would obligate Hancock Park Convalescent Hospital to
13 readmit her. Ms. Nissan also recognizes that the Los Angeles
14 County Superior Court Rules discourage mandatory temporary
15 restraining orders, which "are difficult to enforce and, as a
16 practical matter, are easily stayed by filing a notice of
17 appeal.... If only a mandatory injunction will protect the
18 applicant, the court should be so informed." L.A. County Sup.
19 Ct. Rules, Rule 9.32(d)(1).

20 In this instance, only a mandatory temporary restraining
21 order will protect Ms. Nissan. She is an 78 year-old woman who
22 cares only about the quality of her life for the remaining weeks
23 or months of her life. For the past three years, Hancock Park
24 Convalescent Hospital has been home to Ms. Nissan. Like any
25 wrongfully-evicted person, she deserves to return to that home as
26 soon as is possible.

27 Put simply, Ms. Nissan has relatively little interest in a
28 final judgment in this action. She may not be alive at that

1 point and, in any event, the stability of her residence is of
2 overriding concern.

3 As quoted above, the Superior Court Rules note that
4 mandatory relief is generally difficult to enforce. L.A. County
5 Sup. Ct. Rules, Rule 9.32(d)(1). In this instance, however,
6 enforcement of mandatory relief would be relatively simple: the
7 one-time readmission of Ms. Nissan would require little or no
8 monitoring by the Court.

9 Finally, only a mandatory temporary restraining order can
10 right the wrong that occurs when a resident is wrongfully evicted
11 from a nursing home. If, in these situations, the Court were to
12 refuse to alter the status quo, nursing homes could dump
13 residents at hospitals without fear of judicial action.

14 **C. MS. NISSAN SHOULD NOT BE REQUIRED TO POST AN UNDERTAKING.**

15 "A bond is not required for a TRO, but the court has
16 discretion to require it.... The court must require a bond on
17 granting a preliminary injunction (CCP 529) except in cases
18 mentioned in that section, in other statutes, by case law (e.g.,
19 indigency) or when waived by the party restrained." L.A. County
20 Sup. Ct. Rules, Rule 9.32(e)(1), (2). Therefore, a bond is not
21 required in this instance, because Ms. Nissan is indigent. She
22 has no income and has spent all of her savings during her three
23 years in the nursing home. Aside from Medi-Cal payments for her
24 nursing home care, she has no source of support. F. Mashadian
25 Decl., ¶ 9.

26 In addition, there is little "potential harm to the
27 beneficiary if the provision for the bond is waived." Cal. Civ.
28 Proc. Code § 995.240. If the Court orders Ms. Nissan's

1 readmission, Hancock Park Convalescent Hospital will be paid in
2 full by the Medi-Cal program.

3 Finally, the "character of the action or proceeding"
4 supports the waiver of any bond. Cal. Civ. Proc. Code § 995.240.
5 Given the financial situation of Ms. Nissan and many other
6 nursing home residents, the requirement of a bond effectively
7 would prevent challenges by wrongfully evicted residents.

8 **D. CONCLUSION.**

9 Ms. Nissan has been wrongfully evicted from her home in
10 Hancock Park Convalescent Hospital. She requests that the Court
11 order her readmission to that home as soon as is possible.

12 DATED: January 18, 1996

Respectfully submitted,

BET TZEDEK LEGAL SERVICES



By: Eric M. Carlson
Attorneys for Plaintiff
GHODRAT NISSAN

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

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12 GHODRAT NISSAN, by and through)
her guardian ad litem Frank)
Mashadian;)
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Plaintiff,)
14 vs.)
15)
A I B INC. dba HANCOCK PARK)
16 CONVALESCENT HOSPITAL AND)
REHABILITATION CENTER; and DOES)
17 One through Twenty;)
18 Defendants.)
19

CASE NO. BC142732
COMPLAINT FOR:
1) UNLAWFUL ACTION IN
OPERATION OF NURSING HOME,
IN VIOLATION OF SECTION
17200 OF THE BUSINESS AND
PROFESSIONS CODE
2) BREACH OF CONTRACT (THIRD-
PARTY BENEFICIARY TO
MEDI-CAL CONTRACT);
3) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS
4) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS

20

INTRODUCTION

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1. Plaintiff Ghodrat Nissan is 78 years old. For over
three years, her home has been at the Hancock Park Convalescent
Hospital and Rehabilitation Center. She needs nursing home care
because she suffers from diabetes and dementia. She cannot walk
due to a long-standing back problem, and thus must use a
wheelchair in order to move around.

2. Recently Ms. Nissan entered Cedars-Sinai Medical Center
for surgery on her toe. Following the surgery and a recuperative

1 stay at Cedars-Sinai, Ms. Nissan's family requested that she be
2 readmitted to Hancock Park Convalescent Hospital. Hancock Park
3 Convalescent Hospital, however, has refused to readmit Ms.
4 Nissan, in clear violation of federal law which requires Ms.
5 Nissan's readmission.

6 3. Because of Hancock Park Convalescent Hospital's refusal
7 to readmit Ms. Nissan, Cedars-Sinai Medical Center abruptly
8 transferred Ms. Nissan to a second-rate nursing home. She
9 remains in that nursing home today. Thus she has been wrongfully
10 evicted from her home of the last three years, and is at risk
11 both from the trauma of the eviction and from the substandard
12 care provided by her current, second-rate nursing home.

13 4. Ms. Nissan requests that defendants be ordered to
14 readmit her into the Hancock Park Convalescent Hospital. She
15 also requests monetary damages to compensate her for the trauma
16 of their illegal and unscrupulous eviction.

17 **PARTIES**

18 5. Plaintiff Ghodrat Nissan ("Ms. Nissan") has resided at
19 all relevant times in Los Angeles County, California. Ms. Nissan
20 brings this action through her son and guardian ad litem Frank
21 Mashadian.

22 6. Defendant A I B Inc. dba Hancock Park Convalescent
23 Hospital and Rehabilitation Center is a corporation organized
24 under the laws of the State of California. At all relevant times
25 A I B Inc. has done business in the County of Los Angeles.

26 7. The true names and capacities, whether individual,
27 corporate, associate, representative or otherwise, of defendants
28 named as Does One through Twenty are unknown to plaintiff at this

1 time. Consequently plaintiff sues these defendants by fictitious
2 names. Plaintiff will seek leave of court to amend this
3 complaint to show the true names and capacity of these
4 fictitiously named defendants when the names and capacities have
5 been ascertained.

6 8. Plaintiff is informed and believes, and accordingly
7 alleges, that each of the defendants is responsible in some
8 manner for the occurrences alleged in this action and that
9 defendants proximately caused the damage being suffered by
10 plaintiff. Plaintiff is further informed and believes, and
11 accordingly alleges, that each of the defendants was and still is
12 the employer, employee, agent, servant, principal or subsidiary
13 of the other defendants and at all times acted within the course
14 and scope of such employment or agency.

15 **FACTUAL ALLEGATIONS**

16 9. Defendants own, control, operate and manage the Hancock
17 Park Convalescent Hospital and Rehabilitation Center ("Hancock
18 Park Convalescent Hospital"), a nursing home located at 505 North
19 La Brea Avenue in Los Angeles, California.

20 10. If a nursing home accepts reimbursement from the
21 Medicaid program (termed the "Medi-Cal" program in California),
22 the nursing home must comply with federal law set forth in
23 section 1396r of Title 42 of the United States Code, and section
24 483 of Title 42 of the Code of Federal Regulations. Hancock Park
25 Convalescent Hospital accepts Medi-Cal reimbursement and thus
26 must comply with these federal provisions. Relevant to this
27 action, defendants specifically must comply with section
28 1396r(c)(2)(D)(iii) of Title 42 of the United States Code, and

1 section 483.12(b) (3) of Title 42 of the Code of Federal
2 Regulations.

3 FIRST CAUSE OF ACTION

4 UNLAWFUL ACTION IN OPERATION OF NURSING HOME, IN VIOLATION OF
5 SECTION 17200 OF THE BUSINESS AND PROFESSIONS CODE

6 By Plaintiff Ghodrat Nissan against Defendants A I B Inc. dba
7 Hancock Park Convalescent Hospital and Rehabilitation Center
8 and Does One through Twenty

9 11. Ms. Nissan restates and realleges paragraphs 1 through
10 10 as if fully stated here.

11 12. Section 17203 of the Business and Professions Code
12 authorizes injunctive relief against "[a]ny person who engages,
13 has engaged or proposes to engage in unfair competition."
14 Section 17200 of the Business and Professions Code defines
15 "unfair competition" as "any unlawful, unfair or fraudulent
16 business act or practice."

17 13. Until recently Ms. Nissan resided in Hancock Park
18 Convalescent Hospital, where she had resided for over three
19 years. On or about January 2, 1996, however, Ms. Nissan entered
20 Cedars-Sinai Medical Center for treatment of an infected toe.
21 Subsequently the toe was removed.

22 14. On or about January 12, 1996, Ms. Nissan through her
23 family and her attorney requested defendants to readmit Ms.
24 Nissan to Hancock Park Convalescent Hospital. Defendants refused
25 to readmit Ms. Nissan, claiming that they were under no
26 obligation to do so.

27 15. Pursuant to section 1396r(c) (2) (D) (iii) of Title 42 of
28 the United States Code, and section 483.12(b) (3) of Title 42 of

1 the Code of Federal Regulations, a nursing home must readmit a
2 resident to the first available bed if 1) the resident is
3 eligible for the Medi-Cal program and 2) the resident needs
4 nursing home services. In this case, Ms. Nissan 1) is eligible
5 for the Medi-Cal program and 2) needs nursing home services.

6 16. Hancock Park Convalescent Hospital is obligated to
7 readmit Ms. Nissan.

8 17. Defendants have violated section 1396r(c)(2)(D)(iii) of
9 Title 42 of the United States Code, and section 483.12(b)(3) of
10 Title 42 of the Code of Federal Regulations.

11 18. Defendants' refusal to readmit Ms. Nissan violates
12 federal law and threatens Ms. Nissan's health and safety.
13 Defendants have committed an unlawful, unfair and fraudulent
14 business act which presents a continuing threat to Ms. Nissan.

15 **SECOND CAUSE OF ACTION**

16 **BREACH OF CONTRACT**

17 **(THIRD-PARTY BENEFICIARY TO MEDI-CAL CONTRACT)**

18 **By Plaintiff Ghodrat Nissan against Defendants A I B Inc. dba**
19 **Hancock Park Convalescent Hospital and Rehabilitation Center**
20 **and Does One through Twenty**

21 19. Ms. Nissan restates and realleges paragraphs 1 through
22 18 as if fully stated here.

23 20. Ms. Nissan is informed and believes, and accordingly
24 alleges, that defendants have entered into a Medi-Cal
25 Participation Agreement with the California Department of Health
26 Services. The Medi-Cal Participation Agreement obligates
27 defendants to comply with all provisions of section 1396r of
28 Title 42 of the United States Code, and section 483 of Title 42

1 of the Code of Federal Regulations.

2 21. The Medi-Cal Participation Agreement thus compels
3 defendants to comply with section 1396r(c)(2)(D)(iii) of Title 42
4 of the United States Code, and section 483.12(b)(3) of Title 42
5 of the Code of Federal Regulations, each of which requires a
6 nursing facility to readmit a nursing facility resident after
7 that resident's temporary hospitalization, if that resident is
8 eligible for the Medi-Cal program.

9 22. Section 1396r(c)(2)(D)(iii) and section 483.12(b)(3)
10 compel defendants to readmit Ms. Nissan to Hancock Park
11 Convalescent Hospital.

12 23. Ms. Nissan thus is a direct and intended beneficiary of
13 the Medi-Cal Participation Agreement entered into by defendants
14 and the California Department of Health Services.

15 24. Ms. Nissan brings this cause of action as a third-party
16 beneficiary to the Medi-Cal Participation Agreement entered into
17 by defendants and the California Department of Health Services.

18 **THIRD CAUSE OF ACTION**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

20 **By Plaintiff Ghodrat Nissan against Defendants A I B Inc. dba**
21 **Hancock Park Convalescent Hospital and Rehabilitation Center**
22 **and Does One through Twenty**

23 25. Ms. Nissan restates and realleges paragraphs 1 through
24 24 as if fully stated here.

25 26. Defendants acted outrageously in refusing to readmit
26 Ms. Nissan to Hancock Park Convalescent Hospital in spite of
27 clear federal law requiring such readmission. Defendants
28 intended to cause, or recklessly disregarded the probability of

1 causing, emotional distress to Ms. Nissan.

2 27. Defendants' refusal to readmit Ms. Nissan to Hancock
3 Park Convalescent Hospital has caused Ms. Nissan to suffer great
4 emotional distress, anguish and humiliation.

5 28. Defendants acted willfully and with malice, fraud and
6 oppression. Ms. Nissan accordingly is entitled to punitive and
7 exemplary damages.

8 **FOURTH CAUSE OF ACTION**

9 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

10 **By Plaintiff Ghodrat Nissan against Defendants A I B Inc. dba**
11 **Hancock Park Convalescent Hospital and Rehabilitation Center**
12 **and Does One through Twenty**

13 29. Ms. Nissan restates and realleges paragraphs 1 through
14 28 as if fully stated here.

15 30. In refusing to readmit Ms. Nissan to Hancock Park
16 Convalescent Hospital, defendants negligently violated federal
17 law.

18 31. As a result of defendants' negligence, Ms. Nissan has
19 suffered emotional distress, anguish and humiliation.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiffs request that the Court award the
22 following relief:

23 **First and Second Causes of Action**

24 A. An order requiring defendants to readmit Ms. Nissan to
25 the first available bed at Hancock Park Convalescent Hospital and
26 Rehabilitation Center.

27 B. An order enjoining defendants from evicting Ms. Nissan
28 from Hancock Park Convalescent Hospital and Rehabilitation Center

1 unless defendants first comply with the eviction procedures set
2 forth in section 1396r(c)(2)(A), (B) and (C) of Title 42 of the
3 United States Code, and section 483.12(a) of Title 42 of the Code
4 of Federal Regulations.

5 C. Costs of suit incurred by plaintiffs.

6 D. Any further relief the Court may deem just and proper.

7 Third and Fourth Causes of Action

8 A. An award of compensatory, exemplary and punitive
9 damages in excess of \$25,000.

10 B. Prejudgment interest as allowed by law.

11 C. Costs of suit incurred by Ms. Nissan.

12 D. Any further relief the Court may deem just and proper.

13 Dated: January 17, 1996

Respectfully submitted,

14 Bet Tzedek Legal Services

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16 By: Eric M. Carlson
17 Attorney for Plaintiff
18 GHODRAT NISSAN
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